State of California Office of Administrative Law

In re:

Department of Corrections and

Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3000, 3075.1, 3076.4, 3269,

3357

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2014-0418-03 S

This rulemaking action by the Department of Corrections and Rehabilitation (Department) makes amendments to existing sections in Title 15 of the California Code of Regulations to add a definition of the "Strategic Offender Management System (SOMS)". This rulemaking also removes previously incorporated forms CDC 127 (Rev 06/01) and CDCR 1882 (Rev 02/07). The Department has instead placed the information requested on these forms into the regulation text to allow its use with the SOMS.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/2/2014.

Date: 6/2/2014

Kevin D. Hull Senior Attorney

For:

DEBRA M. CORNEZ

Director

Original: Jeffrey Beard Copy: Gail Long

For use by Secretary of State only See instructions on NOTICE PUBLICATION/REGULATION DORSED FILED STD. 400 (REV. 01-2013) NOTICE FILE NUMBER REGULATORY ACTION NUMBER EMERGENCY NUMBER OAL FILE 2014-0418-035 NUMBERS For use by Office of Administrative Law (OAL) only 2014 APR 18 AN 11:36 OFFICE OF NOTICE REGULATIONS AGENCY WITH RULEMAKING AUTHORITY Department of Corrections and Rehabilitation 13-0160 A. PUBLICATION OF NOTICE (Complete for publication in Notice Register) 1. SUBJECT OF NOTICE FIRST SECTION AFFECTED 2. REQUESTED PUBLICATION DATE TITLE(S) 3. NOTICE TYPE Notice re Proposed TELEPHONE NUMBER FAX NUMBER (Optional) 4. AGENCY CONTACT PERSON Other Regulatory Action ACTION ON PROPOSED NOTICE NOTICE REGISTER NUMBER OAL USE Approved as Approved as Disapproved ONLY Submitted Modified Withdrawn B. SUBMISSION OF REGULATIONS (Complete when submitting regulations) 1a. SUBJECT OF REGULATION(S) 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Removal of Form Numbers 127 and 1882 from CCR, Title 15 Z-2013-1217-07 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) **SECTION(S) AFFECTED** per agency (List all section number(s) request KH. individually. Attach 5/24/14. 3075.1, 3076.4, 3269, and 3357, 3000 additional sheet if needed.) TITLE(S) REPEAL 15 3. TYPE OF FILING Regular Rulemaking (Gov. Certificate of Compliance: The agency officer named Emergency Readopt (Gov. **Changes Without Regulatory** Code §11346) below certifies that this agency complied with the Code, §11346.1(h)) Effect (Cal. Code Regs., title Resubmittal of disapproved or provisions of Gov. Code §§11346.2-11347.3 either 1, §100) withdrawn nonemergency before the emergency regulation was adopted or File & Print Print Only filing (Gov. Code §§11349.3, within the time period required by statute. 11349.4) Resubmittal of disapproved or withdrawn Emergency (Gov. Code, Other (Specify) emergency filing (Gov. Code, §11346.1) §11346.1(b)) 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, \$44 and Gov. Code §11347.1) 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) Effective January 1, April 1, July 1, or Effective on filing with §100 Changes Without Effective October 1 (Gov. Code §11343.4(a)) other (Specify) Secretary of State Regulatory Effect 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY Fair Political Practices Commission State Fire Marshal Department of Finance (Form STD. 399) (SAM §6660) Other (Specify) 7. CONTACT PERSON TELEPHONE NUMBER FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) Gail Long (916) 445-2276 (916) 324-6075 gail.long@cdcr.ca.gov For use by Office of Administrative Law (OAL) only I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form **ENDORSED APPROVED** is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification. SIGNATURE OF AGENCY HEAD OR DESIGNEE JUN 02 2014 TYPED NAME AND TITLE OF SIGNATORY MARTIN HOSHINO, Undersecretary, Operations Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text underline indicates additional text and strikethrough indicates deleted text.

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

*

Strategic Offender Management System (SOMS) is an electronic automated offender management system that consolidates existing databases and records to a fully automated system and replaces certain manual paper processes.

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NOTE: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7 Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid* v. *Cate* (U.S.D.C.N.D. Cal. C90-3094 TEH).

Article 6.5. Intake, Release and Discharge of Inmates

3075.1. Intake Processing.

Subsections 3075.1(a) through 3075.1(d) are unchanged.

Subsection 3075.1(d) is shown for reference.

Subsection 3075.1(d)(1) is amended to read:

- (d) Casework information and documents important to the placement and supervision of the inmate shall include:
- (1) CDC Form 127 (Rev. 5/00), Notification in Case of Inmate Death, Serious Injury, or Serious Illness (see section 3357).

Subsections 3075.1(d)(2) through 3075.1(j)(2) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.01, 1203.03, 2930, 3002, 5054, and 5068, Penal Code.

3076.4. Recall of Commitment Processing for Penal Code Section 1170(e).

Subsections 3076.4 through 3076.4(c)(1) are unchanged

Subsections 3076.4(c) and (c)(1) are unchanged and shown for reference.

- (c) The C&PR shall review the CDC Form 128-C and the inmate's central file.
- (1) If the inmate is sentenced to death or to life without the possibility of parole, the Classification and Parole Representative (C&PR) shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono, and file the original in the inmate's central file. A copy of the CDC Form 128-B excluding any confidential information, as defined in section 3321, shall be sent to the inmate and the inmate's physician.

Subsection 3076.4(c)(2) is amended to read:

(2) If the inmate is not sentenced to death or to life without the possibility of parole, medical staff shall explain the recall of commitment process to the inmate within 48 hours of notification and arrange for the inmate to designate a family member or other outside agent on CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information, which is incorporated by reference. The inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition. If the inmate is mentally unfit to designate a family member or other outside agent, medical staff shall contact the inmate's emergency contact listed on the CDC Form 127 (Rev. 06/01), Notification in Case of Inmate Death, Serious Injury, or Serious Illness (see section 3357), which is incorporated by reference, and advise them of the recall process.

Subsections 3076.4(d) through 3076.4(j) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and Martinez v. Board of Parole Hearings (2010) 183 Cal.App.4th 578.

Subchapter 4. General Institution Regulations

Article 1.6. Inmate Housing

3269. Inmate Housing Assignments.

Subsection 3269 is unchanged and included for reference.

Inmates shall accept Inmate Housing Assignments (IHAs) as directed by staff. It is the expectation that all inmates double cell, whether being housed in a Reception Center, General Population (GP), an Administrative Segregation Unit (ASU), a Security Housing Unit (SHU), or specialty housing unit. If staff determines an inmate is suitable for double celling, based on the criteria as set forth in this section, the inmate shall accept the housing assignment or be subject to disciplinary action for refusing.

IHAs shall be made on the basis of available documentation and individual case factors. Inmates are not entitled to single cell assignment, housing location of choice, or to a cellmate of their choice.

Subsection 3269(a) is amended to read:

- (a) Upon arrival at an institution, facility, or program reception center, a designated custody supervisor shall screen an inmate for an appropriate housing assignment. The screening authority involved in the review and approval of an inmate's housing assignment must evaluate all factors to be considered when completing the Initial Housing Review, including but not limited to:
- Inmate name, CDC number, and Personal Identification number.
- Personal factors such as race, date of birth, age, weight, height, birth place, and whether the inmate is a foreign national.
- Receiving Institution.
- County of commitment.
- Out to court return and escape history.
- Length of sentence.
- Enemies and victimization history.
- Criminal influence demonstrated over other inmates.
- Previous housing status.
- Reason(s) for prior segregation.
- History of "S" suffix determination pursuant to CCR subsection 3377.1(c).
- History of in-cell assaults and/or violence.
- Prison gang or disruptive group affiliation and/or association.
- Involvement in a race based incident(s).
- Nature of commitment offense.
- Documented reports from prior cellmate(s) that the inmate intimidated, threatened, forced, and/or harassed him or her for sex.
- Documentation that the cellmate(s) refused to return to a cell occupied by the inmate because of fear, threats, or abuse perpetrated by the inmate.
- Documentation that the inmate has been the victim of a sexual assault or was previously single celled.

• Adjudicated Department Rules Violations Reports (RVR) where the inmate was found guilty as a perpetrator in an act of physical abuse, sexual abuse, sodomy, or other act of force against a cellmate.

Subsection (b) is amended to read:

- (b) The screening authority shall complete the a CDCR Form 1882 (rev. 2/07), Initial Housing Review, stating if the inmate is suitable for dorm/cell housing with or without special restrictions. Restrictions are any case factors which may limit the inmate's housing placement options such as, but not limited to:
- Security issues including ASU and SHU placement.
- Request for Protective Custody.
- Medical or mental health issues.
- Personal factors such as age, weight, and height.
- Integrated Housing Code.

Staff shall ensure that the housing policies regarding special category inmates covered under specific litigation remain in place during the housing assignment.

Subsections 3269(c) through 3269(g) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: 5054, Penal Code.

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

3357. Inmate Deaths.

Subsections 3357(a) through 3357(d) are unchanged.

Subsections 3357(e) through 3357(f) are amended to read:

- (e) Staff shall review the decedent's central file and locate the current CDC Form 127 (Rev. 05/00), Notification in Case of Inmate Death, Serious Injury, or Serious Illness to identify the inmate's next of kin or person(s) to be notified, and to determine the existence of a will. The Notification is to be completed annually or when the inmate is transferred. Counseling staff are to complete the Notification, and must witness the inmate's dated signature. The Notification is not to be used as a will. The Notification shall include:
- (1) Inmate name, CDC number, Personal Identification number, and current Institution.
- (2) The name, relationship, telephone, and address of person to be notified.
- (3) The name, relationship, telephone, and address of the contact person for a will.
- (4) Whether the inmate is a foreign national.

(f) Staff shall attempt to notify individual(s) listed on the CDC Form 127 Notification in Case of Inmate Death, Serious Injury, or Serious Illness as the person(s) to be notified of the death, in person, or, if personal contact is not practical, by telephone. Staff shall send a telegram notification to the next-of-kin, person(s) to be notified as listed on the CDC Form 127, and/or legally appointed representative, offering consolation, which shall include:

Subsections 3357(f)(1) through 3357(g) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2082, 5021, 5022, 5054 and 5061, Penal Code; Sections 1797.188, 1797.189, 7104, 7200, 7201 and 7302, Health and Safety Code; and Sections 12525, 27491, 27491.2 and 27491.3, Government Code.

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Additional instructions are listed on the back of this form.

COUNSELING STAFF WITNESS'S PRINTED NAME: TITLE SIGNATURE

COUNSELING STAFF WITNESS'S PRINTED NAME: TITLE: SIGNATURE

INMATE'S SIGNATURE

DATE

NOTIFICATION IN CASE OF INMATE DEATH, SERIOUS INJURY, OR SERIOUS ILLNESS CDC 127 (Rev 06/01)

PENAL CODE SECTION 5022

(a) Upon entry of a prisoner in a facility operated by the Department of Corrections and at least every year thereafter, the Director of Corrections shall obtain from the prisoner the name and last known address and telephone number of any person or persons who shall be notified in the event of the prisoner's death or serious illness or serious injury, as determined by the physician in attendance, and who are authorized to receive his or her body. The persons shall be noted in the order of the prisoner's preference. The Director of Corrections shall provide the prisoner with the opportunity to modify or amend his or her notification list at any time.

(b) The Director of Corrections shall use all reasonable means to contact the person or persons set forth in the notification list upon the death or serious illness or serious injury, as determined by the physician in attendance, of the prisoner while confined in a facility operated by the Department of Corrections.

SELECTIONS FROM PENAL CODE 5061

Whenever any person confined in any state institution subject to the jurisdiction of the Department of Corrections dies, and no demand or claim is made upon the Director or his or her designee for the body of the deceased inmate by the inmate's next of kin or legally appointed representative, the director shall dispose of the body by cremation or burial no sooner than 10 calendar days after the inmate's death. The Director or his or her designee may waive the 10-day waiting period for disposal of the deceased inmate's body if confirmation is received that the inmate's next of kin, or other individual identified by the inmate, refuses to take possession of the body. If any personal funds or property of that person remains in the custody or possession of the Director of Corrections, the funds shall be applied to the payment of his or her cremation or burial expenses and related charges

INSTRUCTIONS FOR COMPLETING CDC FORM 127

- 1. Initial preparation of CDC Form 127 shall be completed at the Reception Center during reception center processing
- Staff shall be responsible for interviewing the inmate to obtain and document the necessary information on the form. The CDC Form 127 shall not be completed by the inmate.
- The inmate is responsible for providing complete and accurate information to the CCT or person who is preparing this form. The
 inmate shall identify each person to notify by full name, relationship of the person to inmate, the complete mailing address, the
 home telephone number, and the work telephone number.
- 4. The inmate's dated signature must be witnessed by a counseling staff member and documented with the date, staff member's printed name, signature, and institution.
- Information shall be updated annually as part of the inmate's annual classification review process and when referred to the Classification Staff Representative for program placement or transfer endorsement. The information shall also be updated upon the inmate's request.
- 6. If the inmate has a will, the inmate is responsible to identify the person who possesses or has access to it. If the inmate reports that he or she has no will, then the word "NONE" shall be entered into the appropriate box NOTE: THIS FORM IS NOT TO BE USED AS A WILL.
- 7. If the inmate is a foreign national, written notification within 72 hours of the official notice of death shall be made to the appropriate consulate post. The notification shall include the inmate's name, CDC number, date and time of death, and the attending physician's name.
- 8. The information on this form shall be typed or legibly handwritten in ink by a staff member. Corrections shall not be made with correction fluid or tape. Required corrections shall be made by striking through information to be deleted, and providing a signature and printed name of the staff member making a correction.

 9. Staff should consult the CDCL and Affairs Division.
- 9. Staff should consult the CDC Legal Affairs Division regarding any questions dealing with the release of the decedent's remains,
- 10. This form shall be placed as the top document in the Miscellaneous Section of the inmate's Central File. Updated forms shall be placed in reverse chronological order, the most recent being on top. Each form shall be retained in the C-File.
- 11. In the case of death, serious injury or serious illness, as determined by the attending physician, designated staff shall make a reasonable effort to notify each individual and next of kin listed on this form.

Initial Housing Review

Prior to housing, the aforementioned information was obtained during a private screening process and the review of available documents pertaining to this inmate.

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KOUTING/DISTRII CONTROL PROGRAM OFFICE C-FILE

Initial Housing Review

Prior to housing, the aforementioned information was obtained during a private screening process and the review of available documents pertaining to this inmate.

	·	Initial Housing Review (continued)						
CDC# NAME OF INMATE (Last, First, MI)								
IN-PRISON SEXUAL ASSAULTS								
Inmate Interview: - While incarcerated (jail/prison), have you ever been involved in a sexual related assault, i.e. pressured, fondled, raped: (Check applicable items. Explain and/or give details of checked items below)								
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